IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14989 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.C. - Petitioner(s)

Versus

J.C.THAKAR C/O. KIRIT C SHAH - ADVOCATE - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

1.Though served, nobody appears on behalf of the respondent workman. Under the circumstances, this Court has no other alternative but to decide and dispose of

the present Special Civil Application ex-parte on merits.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Ahmedabad, dated 28.12.2004 passed in Reference (IT) No.231/1996 in partly allowing the said Reference and substituting the order of punishment imposed by the Disciplinary Authority from putting the respondent workman to the minimum of the pay-scale to withholding of 2 increments without permanent future effect.

3. The respondent workman was serving as a Conductor and while he was on duty on 25.11.1989 the bus was checked by the checking squad and it was found that 4 passengers were not issued the tickets, though the fare was collected and Departmental Inquiry was initiated against him. That the charge came to be held to be proved in the Departmental Inquiry proceedings, the Departmental Authority imposed punishment of putting the petitioner to the minimum of the pay-scale. The respondent workman raised industrial dispute

challenging the order dated 7.5.1991 with regard to default case No.299/1989 as well as one another order dated 1.4.1991 in respect to default case No.91/1990. However, the respondent workman did not press for quashing and setting aside the order dated 1.4.1991 in respect to default case No.91/1990 and the Industrial Tribunal, Ahmedabad, while considering the order dated 7.5.1991 with respect to default case No.299/1989 held that it is true that tickets were not issued. However, treating the same as a negligence and there was no other intention on the part of the respondent workman in not issuing the tickets and therefore, substituted the order of punishment from putting the respondent workman to the minimum of the pay-scale w.e.f. 1.6.1991 to withholding of 2 increments without permanent future effect. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Ahmedabad dated 28.12.2004 passed in Reference (IT) No.231/1996, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri Hardik C. Rawal, learned advocate, appearing on behalf of the petitioner has vehemently submitted that the Industrial Tribunal has erred in exercising powers

under Section 11(A) of the I.D.Act after coming to the conclusion that it was a case of gross negligence on the part of the respondent workman and the charges are false. He has also further submitted that even the Industrial Tribunal has held that the charge of not issuing the tickets to 4 passengers, though the fare was collected, has been proved, however, there was no bad intention on the part of the respondent workman in not issuing the tickets and it was a case of negligence only. It is further submitted that once the fare was collected, it was the duty of the conductor to issue tickets and not issuing the tickets after collecting the fare till the checking by the checking squad itself suggested bad intention on the part of the respondent workman. It is further submitted that as held by the Supreme Court in case of ***Regional Manager, RSRTC V/s. Ghansham Sharma reported in 2002 10 SCC p.330*** and in another case of ***Regional Manager, Rajasthan State Road Transport Corporation V/s. Sohanlal reported in (2004)8 SCC p.218*** even not issuing the tickets is held to be a serious misconduct for which even dismissal is justified. However, in the present case, the punishment which was imposed by the Disciplinary Authority was putting the petitioner to the minimum of the pay-scale which was even subsequently modified by First Appellate

Authority to put the respondent workman to the minimum of the pay- scale at Rs.829/- w.e.f. 1.7.1994 and therefore, it is submitted that the Labour Court has materially erred in interfering with the said order of First Appellate Authority and therefore, it is requested to allow the present Special Civil Application.

5. It is not in dispute that even charge with regard to not issuing the tickets to 4 passengers though the fare was collected has been held to be proved. However, the Labour Court has come to the conclusion that it was a sheer negligence on the part of the respondent workman. When it was found that the fare was collected and the tickets were not issued to 4 passengers, it was not a case of only negligence as held by the Labour Court but it was the bounden duty of the conductor to issue tickets on receiving fare. Therefore, the finding given by the Labour Court that it was only a negligence and there was no bad intention on the part of the respondent workman in not issuing the tickets, is nothing but a perverse finding. Even otherwise, as held by the Hon'ble Supreme Court even not issuing the tickets to the passengers is a serious misconduct and for which even dismissal is justified. As per the

decision of the Hon'ble Supreme Court not issuing the tickets by the conductor would not be only monetary loss to the corporation but still have a loss of confidence also. In the present case, the Disciplinary Authority as well as subsequently the First Appellate Authority have itself taken a lenient view in not dismissing the workman. Under the circumstances and even on proved charges, the Labour Court was not justified in exercising powers under Section 11(A) of the I.D.Act and therefore, while interfering with the order of punishment imposed by the First Appellate Authority, the Industrial Tribunal has exceeded in its jurisdiction while exercising powers under Section 11(A) of the I.D.Act. It also appears that the Industrial Tribunal has not exercised its powers under Section 11(A) of the I.D.Act judiciously. Under the circumstances, the impugned judgment and award passed by the Industrial Tribunal, Ahmedabad, cannot be sustained.

6. For the reasons stated above, the petition succeeds. The judgment and award passed by the Industrial Tribunal, Ahmedabad, dated 28.12.2004 passed in Reference (IT) No.231/1996 is hereby quashed and set aside.

7.Rule is made absolute to the aforesaid extent however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.